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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KIER KEAND'E GARDNER

10 Plaintiff,

11 v.

12 DAVID L. REYNOLDS, et al.,

13 Defendants.

Case No. C19-670 RSM

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

14 **I. INTRODUCTION**

15 This matter comes before the Court on the Report and Recommendation ("R&R") of the
16 Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. #6. The R&R recommends
17 dismissal of Plaintiff Kier Keand'e Gardner's complaint under 28 U.S.C. § 1915(e)(2) for failure
18 to state a claim.¹ After considering Plaintiff's Complaint, Dkt. #1, Objections, Dkt. #7, and the
19 remaining record, the Court agrees with Judge Tsuchida that Plaintiff's claims should be dismissed
20 with prejudice.

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23 ¹ The Court notes Plaintiff's objection to being addressed as Mr. Gardner instead of Mr. Keand'e, and will refer to him hereafter as "Plaintiff."

II. BACKGROUND

Plaintiff's claims arise from Defendants' alleged failure to file and process his name change application and to rectify this failure thereafter. Defendant contends that Mr. Reynolds, Judge Hedine, Whatcom County Clerk's Office, and Whatcom Superior Court failed to file his name-change documents in violation of his right of access to the courts, access to the government for redress of grievances, and equal rights under the law. Dkt. #4 at 16-18. He likewise contends that Whatcom County Council and Whatcom County Superior Court failed to take "corrective action" to address this failure in retaliation for his having commenced an unrelated action against Judge Raquel Montoya-Lewis. *Id.* at 20-21.

III. DISCUSSION

A. Legal Standard

A district court has jurisdiction to review a Magistrate Judge's report and recommendation on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court reviews de novo those portions of the report and recommendation to which specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

B. Judicial and Quasi-Judicial Immunity

The R&R correctly determined that Plaintiff's Section 1983 claims against Judge Hedine and Mr. Reynolds for actions taken in their capacities as judge and county clerk are barred by judicial and quasi-judicial immunity. Dkt. #6 at 5-6. Plaintiff objects to the R&R on the grounds that Judge Tsuchida erroneously applied federal case law involving federal officers to Plaintiff's

1 complaint, which alleges violations by county officials. Dkt. #7 at 2-4. Because the doctrine of
2 judicial and quasi-judicial immunity plainly applies to judicial officers at the county level, the
3 Court finds no error in the R&R's application of the law. *See Sutton v. LLewellyn*, 288 F. App'x
4 411, 412 (9th Cir. 2008) (County Clerk of Monterey County Superior Court had absolute quasi-
5 judicial immunity from damages for civil rights violations); *Foti v. Cty. of San Mateo*, 90 F. App'x
6 488, 491 (9th Cir. 2003) (Judicial immunity barred Section 1983 claims against county superior
7 court judge).

8 **C. Failure to State a Claim**

9 Likewise, the Court agrees that the facts alleged by Plaintiff do not give rise to a
10 constitutional violation under 42 U.S.C. §§ 1981, 1983, and no additional facts could cure this
11 defect. *Id.* at 7-12. The Court addresses Plaintiff's objections, in turn, below.

12 **1. Right of Access to the Courts**

13 The R&R concludes that Plaintiff is not entitled to a right of access to the courts with
14 respect to this civil action. Dkt. #6 at 8 (“[A] prisoner has no constitutional right of access to the
15 courts to litigate an unrelated civil claim.”) (citing *Simmons v. Sacramento Cty. Superior Court*, 318
16 F.3d 1156, 1160 (9th Cir. 2003)). Plaintiff objects that he should be allowed to amend his complaint
17 to demonstrate to the court the connection between this civil action and his criminal case. Dkt. #7 at
18 5. However, the injury alleged by Plaintiff—here, Defendants' alleged failure to process his name-
19 change documents and to rectify this failure—cannot satisfy the injury requirement to claim
20 violation of his right of access to the courts. An injury that invokes an inmate's constitutional right
21 of access to the courts must affect his ability to attack his sentence, directly or collaterally, or to
22 challenge the conditions of his confinement. *Simmons*, 318 F.3d at 1160. This civil case does not
23 fall into either category. Plaintiff contends that this name change dispute has affected his ability to file

1 pleadings related to his criminal action because it has prevented him from listing a particular name on
2 pleadings. *See* Dkt. #4, ¶67 (discussing Plaintiff’s inability “to get any motions, including criminal
3 motions, in the trial court for well over 30 months now . . . or be a part in any judicial proceeding of a
4 civil nature as KEANDE or in Plaintiff’s Given Names: KIER KEAND’E”). Plaintiff’s constitutional
5 right of access to the courts cannot conceivably be hampered by his ability to file documents under the
6 name “Kier Keand’e” as opposed to “Kier Keand’e Gardner,” nor by any other issue arising from this
7 civil case. The Court therefore agrees with the R&R’s conclusion that Plaintiff is not entitled to right
8 of access to the courts for this case and that the defect cannot be cured through amendment.

9 Plaintiff also objects to the R&R’s assessment that his allegations related to this claim
10 “arise from a disagreement with and refusal to comply with the Court’s instructions on the proper
11 procedures and venue for filing such documents and requests for relief.” Dkt. #6 at 7. Plaintiff
12 contends that he did not refuse to reply, but rather that Mr. Reynolds misunderstood the requirements
13 for filing a name-change petition. Dkt. #7 at 5. While the Court is unclear what distinction Plaintiff
14 seeks to draw, either characterization of the alleged facts indicates that Plaintiff failed to follow the
15 procedures requested by the county clerk to apply for a name change. Accordingly, Plaintiff has failed
16 to state a claim that Defendants violated his constitutional right of access to the courts.

17 **2. Discrimination Claim under Section 1981**

18 Plaintiff also objects to Judge Tsuchida’s analysis of his complaint as an equal protection
19 claim under Section 1983. Instead, Plaintiff argues, he alleged impairment of his equal rights
20 under the law in violation of 42 U.S.C. § 1981. Dkt. #7 at 6. Indeed, in addition to listing claims
21 under Section 1983, Plaintiff’s complaint also includes denial of equal rights under 42 U.S.C. §
22 1981(a). Dkt. #4 at 21. A claim under Section 1981 requires a plaintiff to allege intentional
23 discrimination on account of race. *Evans v. McKay*, 869 F.2d 1341, 1344 (9th Cir. 1989) (citing

1 *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 376 (1982)). Even if Plaintiff
2 has alleged a violation of his right to enforce a contract, to sue, to be a party, or to give evidence
3 as a result of Defendants' actions, *see* 42 U.S.C. § 1981(a), the R&R correctly assessed that he
4 failed to "offer any facts to indicate he is being treated differently from a similarly situated class."
5 Dkt. #6 at 8-9. Instead, Plaintiff acknowledges that any connection between Defendants' actions
6 and racial animus is merely speculative, suggesting that defendants "may" have failed to file his
7 documents on account of the fact that he is "considered a man of African-American descent." Dkt.
8 #4 at 22-24. For that reason, Plaintiff has likewise failed to state a claim under Section 1981.

9 **3. General Objections**

10 Plaintiff also argues that he has alleged enough facts to raise a reasonable expectation that
11 discovery would reveal evidence of the allegations charged, and his claims should therefore not be
12 dismissed for failure to state a claim. Dkt. #7 at 7 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544
13 (2007)). Plaintiff misconstrues the distinction between the pleading standard required under
14 *Twombly*, and whether the facts he has alleged support the claims he seeks to prove. Here, Plaintiff
15 has brought claims under 42 U.S.C. §§ 1981 and 1983 alleging violations of his constitutional rights.
16 Even accepting Plaintiff's allegations as true, Plaintiff's dispute over the process for filing a name-
17 change application cannot state a claim for constitutional violation.

18 Finally, Plaintiff disputes the R&R's characterization of his theories of supervisory and
19 municipal liability. Dkt. #7 at 7-8. Regardless of what theory of liability Plaintiff sought to apply to
20 defendants Whatcom County Clerk's Office, Whatcom County Council, and Whatcom County
21 Superior Court, the issue is moot given his failure to state a claim with respect to constitutional
22 violations committed by Judge Hedine or Mr. Reynolds.

1 **CONCLUSION**

2 The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of the
3 Honorable Judge Brian A. Tsuchida, United States Magistrate Judge, any objections thereto, and
4 the remaining record, hereby finds and **ORDERS** as follows:

- 5 (1) The Report and Recommendation is approved and adopted;
- 6 (2) This matter is **DISMISSED with prejudice**;
- 7 (3) The Clerk is directed to send copies of this Order to Plaintiff and to Judge
8 Tsuchida.

9 DATED this 1st day of August 2019.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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